

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
NOV 18 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0217-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JIMMIE O. BEASLEY, JR.,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-36565

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Jimie Beasley

Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Petitioner Jimmie Beasley, Jr., pled guilty to attempted child molestation and sexual conduct with a minor under the age of fourteen and was sentenced in 1992 to consecutive, aggravated prison terms of fifteen and twenty-five years. We have treated his

appeal from the trial court's denial of his motion to modify his sentence as a petition for review of the denial of post-conviction relief. He then filed a separate petition for review, which we have also considered. Absent a clear abuse by the trial court of its discretion, we will not disturb its ruling on a petition for post-conviction relief. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Beasley initially appealed his convictions and sentences, and this court consolidated his appeal with a petition for review of the denial of his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. We affirmed the convictions and the sentences imposed, denying relief on review as well. *State v. Beasley*, Nos. 2 CA-CR 92-0529, 2 CA-CR 93-0089-PR (consolidated) (memorandum decision filed Dec. 21, 1993). Beasley appears to have sought and been denied post-conviction relief three additional times before filing the instant motion to modify his sentence. We granted review on two of those rulings and denied relief. *See State v. Beasley*, No. 2 CA-CR 2002-0291-PR (memorandum decision filed Sept. 19, 2003); *State v. Beasley*, No. 2 CA-CR 2005-0186-PR (decision order filed Mar. 15, 2006).

¶3 In May 2009, Beasley filed the motion to modify or vacate his sentence that gave rise to this petition for review. He contended, essentially, that he and the state had an understanding about the sentences the state would recommend. Relying on Rule 60, Ariz. R. Civ. P., he asserted he is entitled to relief based on fraud and having been misled. The trial court denied relief, finding that Beasley had failed to “comply with the Arizona Rules

of Criminal Procedure” and that he had relied on an inapplicable civil rule as a basis for relief. The court also found the claim raised was precluded because “it has already been adjudicated in Rule 32 proceedings before this Court.” *See* Ariz. R. Crim. P. 32.2(a)(2). Beasley has not established the trial court abused its discretion. Whether the claim previously was raised and adjudicated, as it appears to have been, or differs slightly from previously raised claims, the claim could have been raised before and has been waived by Beasley’s failure to raise it. Ariz. R. Crim. P. 32.2. In either case, Beasley’s claim is precluded, and the court correctly denied Beasley’s motion.

¶4 Although we grant the petition for review, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

J. WILLIAM BRAMMER, JR., Judge